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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF MARK A. PERRY IN
SUPPORT OF APPLE INC.'S STATEMENT
IN SUPPORT OF ADMINISTRATIVE
MOTION TO SEAL**

The Honorable Thomas S. Hixson

1 I, Mark A. Perry, hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
3 of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Apple
4 Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential
5 information based on my personal experience representing Apple. I have personal knowledge of the
6 facts stated below and, if called as a witness, would testify competently thereto. I submit this declaration
7 in support of Apple’s Statement in Support of Administrative Motion to Seal.¹

8 2. I am aware that the law of this Circuit allows information to be filed under seal for good
9 cause or in certain compelling circumstances. I also understand that courts routinely seal filings where
10 documents include a company’s trade secrets, internal codenames, confidential research and
11 development, personally identifiable information, or other commercially sensitive information. I
12 understand that this Court has broad latitude to prevent the public disclosure of these categories of
13 commercially sensitive information.

14 3. Apple operates in an intensely competitive environment. Apple has serious and
15 legitimate concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive
16 information in order to gain competitive advantage. As such, Apple takes extensive measures to protect
17 the confidentiality of its information.

18 4. Apple has carefully reviewed the exhibits to Epic Games, Inc.’s Administrative Motion
19 to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5
20 (“Epic’s Motion”) and now proposes to partially seal information therein that, if disclosed, could harm
21 Apple’s competitive business interests.

22 5. Apple seeks to seal Exhibits A–E to Epic’s Motion because the documents contain
23 confidential information regarding Apple’s business and legal strategy in connection with the Injunction
24

25
26 ¹ Courts in the Ninth Circuit routinely grant motions to seal based on declarations of counsel. *See*,
27 *e.g.*, *In re Apple Securities Litigation*, 19-cv-02033-YGR, Dkt. 223 (N.D. Cal.); *In re Qualcomm Litig.*,
No. 17-cv-00108-GPC, Dkt. 398-1 (S.D. Cal. Mar. 26, 2018); *Avago Techs. U.S. Inc. v. Iptronics Inc.*,
No. 10-cv-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-cv-
00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2013). If the Court deems this declaration insufficient, Apple
28 respectfully requests that it be permitted to file a further declaration supporting filing under seal.

issued in this lawsuit and a separate regulatory investigation by the Netherlands competition regulatory authority. In particular, these documents contain extensive discussion of Apple's options for complying with the Injunction and regulatory measures in the Netherlands, including discussion of the commission structure and related considerations. Disclosure of that information would negatively affect Apple's ability to execute on that business and legal strategy in the United States and elsewhere. Because these strategic discussions permeate the documents, the exhibits should be withheld in their entirety.

6. Apple seeks to partially seal Exhibit F to Epic's Motion because the document contains competitively sensitive, non-public information regarding Apple's engagement of consultants in connection with preparing its submissions to a foreign regulatory body in response to an investigation, as well as Apple's use of certain confidential codenames related to new product developments. Public disclosure would reveal Apple's internal business decision-making, which could be used by competitors to gain an unfair competitive advantage over Apple. Exhibit F also contains personally identifiable information in the form of email addresses of Apple employees. Apple has narrowly-tailored its sealing request as to maximize the public's access to court documents without jeopardizing Apple's business interests. The remainder of Exhibit F remains unredacted.

7. Below is a chart detailing the portions of the exhibits sealable for the reasons explained herein, as well as in Apple's statement.

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
Entirety of document	Exhibit A to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit B to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit C to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit D to Epic's Motion	Reflects non-public Apple business and legal strategy
Entirety of document	Exhibit E to Epic's Motion	Reflects non-public Apple business and legal strategy

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
Redacted word in first entry on "Privilege Logs: Employee Slack Channels"	Exhibit F to Epic's Motion	Reflects non-public Apple business strategy
Redacted word in first entry on "Privilege Logs: Message Board and Attachments"	Exhibit F to Epic's Motion	Reflects non-public Apple business strategy
Redacted word in first entry on "Privilege Logs: Press or Business Communications"	Exhibit F to Epic's Motion	Reflects non-public Apple legal strategy
Redacted words in fourth entry on "Privilege Logs: Press or Business Communications"	Exhibit F to Epic's Motion	Reflects non-public Apple legal strategy
Redacted email addresses in fifth entry on "Privilege Logs: Press or Business Communications"	Exhibit F to Epic's Motion	Reflects personally identifiable information

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of January 2025, in Washington, D.C.

Dated: January 28, 2025

Respectfully submitted,

By: /s/ Mark A. Perry

Mark A. Perry